

*file*



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

---

Application of Ralph Gerhardt for a Permit to  
Construct a Solid Crib/Pier on the Bed of Green  
Bay, Village of Sister Bay, Door County,  
Wisconsin

---

Case No. 3-LM-96-428  
3-LM-96-429

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND PERMIT**

Ralph Gerhardt, 735 Little Sister Road, Sister Bay, Wisconsin, 54234, applied to the Department of Natural Resources for a permit to place a structure on the bed of Green Bay. The proposed structure would be constructed of cedar with rock cribs. The crib pier would be 106 feet long by 12 feet wide at the top. The proposed project is located in the Village of Sister Bay, Door County, in the SW  $\frac{1}{4}$ , SW  $\frac{1}{4}$ , in Section 6, Township 31 North, Range 38 East.

The Department of Natural Resources issued a Notice of Proposed Structure which stated that unless written objection was made within 30 days of publication of the Notice, the Department might issue a decision on the permit without a hearing. The Department did receive a timely objection.

Pursuant to due notice a hearing was held on April 13, 1999 at Green Bay, Wisconsin. Jeffrey D. Boldt, administrative law judge (the ALJ) presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stas., the PARTIES to this proceeding are certified as follows:

Ralph Gerhardt (Applicant), by

Attorney Waltraud A. Arts  
Quarles & Brady  
1 South Pinckney Street  
P. O. Box 2113  
Madison, WI 53701

Department of Natural Resources, by

Attorney Peter D. Flaherty  
P. O. Box 7921  
Madison, WI 53707-7921

Kurt Pagel  
1086 Melody Drive  
Green Bay, WI 54303

George Krall  
830 Top of the Thumb Lane  
Ellison Bay, WI 54210

### FINDINGS OF FACT

1. Ralph and Susan Gerhardt, 735 Little Sister Road, Sister Bay, Wisconsin 54324, completed filing an application with the Department for a permit under sec. 30.12, Stats., to construct a cedar crib pier on the bed of Green Bay, Town of Sister Bay, Door County, Wisconsin. The Department and the applicants have fulfilled all procedural requirements of secs. 30.12 and 30.02, Stats.

2. The applicants own real property located in Lots 27 and 28 in Section 6, Township 31 North, Range 28 East, Door County. The above-described property abuts Green Bay which is navigable in fact at the project site.

3. The applicants propose to construct a 106 foot long rock-filled crib pier constructed of cedar. The pier surface would be 12 feet wide. The pier would consist of a 10 foot span, then a 10 foot crib, then a 12 foot span, and finally a 52 foot crib with a 3 foot opening in the middle.

4. The purpose of the pier is to moor a boat and to gain access to the waters of Green Bay.

5. The proposed structures will not materially obstruct navigation on Green Bay and will not be detrimental to the public interest upon compliance with the conditions of this permit.

6. The DNR and the applicants entered into a stipulation that resolved issues between those two parties (Exh. 20). There were two remaining objectors, Mr. Pagel and Mr. Krall. Their objections were limited, at hearing, to the following issues: whether the pier would obstruct navigation of small water-craft and whether the pier would have direct and cumulative detrimental impacts to natural scenic beauty. All other requirements of sec. 30.12, Stats., were not objected to by any party and were, accordingly, demonstrated by the applicants by the stipulation.

7. The proposed pier will have some slight impact on the navigation of small water-craft, including kayaks, canoes and other small boats. However, this obstruction to navigation is not significant enough to be "material" within the meaning of sec. 30.12(2), Stats. While small craft will have to navigate slightly farther from shore, navigation in the area is already limited by the shallow water depths and rocky shelf-like character of the bottom surface. Further, the permit, as issued, specifically allows for public access of the pier by small water-craft users who need to traverse the pier area. Accordingly, the pier will not be a material obstruction to navigation.

8. The proposed project is in keeping with the many other piers in the area and will not have a direct detrimental impact upon natural scenic beauty. The cedar crib-filled design is relatively unobtrusive, particularly compared with steel and concrete piers already built in the surrounding area. The pier as such will have some detrimental cumulative impact on natural scenic beauty. Mr. Pagel was persuasive that there has been a proliferation of pier structures in the area in recent years. (Ex 28) All of these man-made structures detract to some degree from the natural beauty of the Door County shoreline. However, while there will be some impact, the DNR was persuasive that cumulative impacts were not sufficient to warrant permit denial in this instance. The DNR Area Water Management Specialist, Ms. Dupperault, testified that the proposed pier was much less visually obtrusive than the numerous other piers to the west of the project site. The cedar pier is much more natural in appearance than many surrounding structures and is not out of keeping with the appearance of the shore from the lake. Further, the permit specifically limits the placement of any visually obtrusive non-navigational items to be placed upon the pier. Taken as a whole, the cumulative detrimental impacts to natural scenic beauty are not sufficient to warrant denial of the permit and are not "detrimental to the public interest" within the meaning of sec. 30.12(2), Stats. The pier is reasonable in size and appearance and will allow the riparian to gain access to the public waters of Green Bay.

9. The applicants are financially capable of constructing, maintaining, monitoring or removing the structure if it should be found in the public interest to do so.

10. The proposed structure will not reduce the effective flood flow capacity of Green Bay upon compliance with the conditions in the permit.

11. The proposed structure will not adversely affect water quality nor will it increase water pollution in Green Bay. The structure will not cause environmental pollution as defined in sec. 281.01(10), Stats., if the structure is built and maintained in accordance with this permit.

12. The Department of Natural Resources has made an environmental assessment of the proposed project and determined that the grant or denial of the permit requested does not constitute a major state action significantly affecting the quality of the human environment.

### CONCLUSIONS OF LAW

1. The applicants are riparian owners within the meaning of sec. 30.12, Stats.
2. The proposed facility described in the Findings of Fact constitutes a structure within the meaning of sec. 30.12, Stats.
3. The Division of Hearings and Appeals has authority under secs. 30.12 and 227.43(1)(b), Stats., and in accordance with the foregoing Findings of Fact, to issue a permit for the construction and maintenance of said structure subject to the conditions specified.
4. The project is a type III action under sec. NR 150.03(8)(f)4, Wis. Adm. Code. Type III actions do not require the preparation of a formal environmental impact assessment. The DNR produced an Environmental Assessment which determined that the approval of the proposed pier was not a major state action significantly impacting the quality of the environment.

### PERMIT

AND THERE HEREBY DOES ISSUE AND IS GRANTED to the applicant a permit under sec. 30.12, Stats., for the construction of a pier as described above, subject to the following conditions:

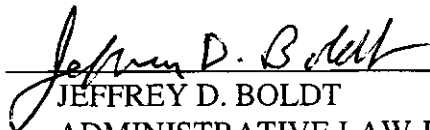
1. You must notify Water Management Specialist Tere Duperrault (phone 920-746-2873) before starting construction and again not *more than* 5 days after the project is complete.
2. You must complete the project as described on or before two years from the date of permit issuance. You may not begin or continue construction after this date unless the Department grants a new permit or permit extension in writing.
3. This permit does not authorize any work other than what you specifically describe in your application and plans, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances or by the U.S. Army Corps of Engineers before starting your project.
5. You must allow free and unlimited access to your project site at any time to any Department employee who is investigating the project's construction, operation, or maintenance.

6. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.
7. You must keep a copy of this permit and approved plans at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
9. The rock used for the riprap must be free of debris and fines.
10. The permit-holder must allow the public traversing the shoreline access over the pier, including persons navigating in small water-craft.
11. No structures or appurtenances are allowed on the pier. A low navigation light is allowed, but no flag poles, nuisance traps, benches, tables, grills, or similar non-navigational items are allowed on the structure.
12. The pier must be maintained and repaired on an annual basis. If the pier is not maintained and repaired, it shall be removed.
13. The pier shall extend no more than 110 feet into the water below the OHWM.
14. The applicant may not place a boat hoist on the proposed pier, but may place a seasonal, flow-through boat lift adjacent to the pier.

Dated at Madison, Wisconsin on April 29, 1999

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By

  
JEFFREY D. BOLDT  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.